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The **MJRMS** is an online student-run academic journal affiliated with the WUSC McGill local committee. Our main goal is to complement WUSC's work on campus by raising awareness about refugee and migration issues. We also serve as a platform for undergraduate and graduate students who wish to publish their work and highlight important issues regarding refugees and migration.

La **RERMM** est une revue scientifique étudiante en ligne sous le parrainage du comité local mcgillois de l'EUMC. Notre but premier est de soutenir le comité local de l'EUMC à l'Université McGill à promouvoir les droits des réfugiés et des migrants. De plus, nous sommes une plateforme qui aide les étudiants au 1er cycle et aux cycles supérieurs à publier leur recherche sur les réfugiés et la migration.

Table of Contents | Table des matières

Arendt’s Algorithm: AI’s Disenfranchising Effect on Refugees as Examined through China’s Uighur Population.

Gideon Salutin.....1

The Humanitarian Crisis at the U.S.-Mexico Border: The Policy Reforms Needed to be Undertaken by the Biden Administration.

Arielle Rosenthal.....23





Arendt's Algorithm: AI's Disenfranchising Effect on Refugees as Examined through China's Uighur Population

Gideon Salutin

*"Automation is a new revolution,
threatening to interrupt the life cycle
in unpredictable ways."*

Hannah Arendt, *Cybernetics and Automation*, 1964

Introduction: Big Data Meets Big Brother (Botsman, 2017)

In 2018, Alibaba Chairman Jack Ma advised China's Central Politics & Law Committee that "the future legal and security system cannot be separated from the internet and Big Data" (Bloomberg, 2016). Simultaneously, many Uighurs were being imprisoned in labour camps, caught by the same Big Data legality that Ma was advising. Uighurs are a Muslim ethnicity largely based in China's Xinjiang region, with independent languages and customs from their neighbouring Han Chinese populations. Perceived differences between the two groups including religion, diet, and customs have generated increasing rifts between the two groups, making intergroup socialization very difficult (Han, 2010). They have also intensified widespread Han beliefs that Uighurs are backwards, savage "others", that must eventually be "civilized" (Allen-Ebrahimian, 2019).

While state repression has been enforced in Xianjiang since the Qing dynasty, current security mechanisms are implemented by Beijing, the communist party, and regional police. It is important to keep in mind that, beyond cultural differences and political rhetoric, Xinjiang holds serious economic interest for the Chinese state. It shares international borders with eight countries, all of whom maintain important markets for Chinese industry. It also enjoys the country's largest oil and gas reserves, 80% of its precious metals, one third of its petroleum and two thirds of its coal (Cunningham, 2012). This may be the reason the state has cracked down so hard on this people rather than other historically separatist ethnicities such as the Hui.

The integration of state security and communal distrust has reduced Uighur culture such that many now meet international standards of Internally Displaced Persons (IDPs) and/or international refugees. Within Xinjiang, internal displacement accelerated under Chen Quanguo, who increased surveillance and security over the Uighur minority when he became party secretary of the region in 2016. Chen established a security surveillance mechanism by which the state monitors Uighurs and arrests those it finds suspicious (Pitel, Shepherd, and Klasa, 2020). Many end up in “re-education camps” where they are tortured, humiliated, forced to eat pork, learn mandarin, and sing the praises of the Chinese state. Most stay there for years, and if they survive to their release (“graduation”) they are followed, forbidden to maintain familial connections, and often barred from returning home, leaving many in a state of constant homelessness and/or nomadism. This has led to Xinjiang’s “Palestinianization”—a term which speaks to its escalating social tensions backed up by settler colonial state policies and security forces (Han, 2010). Recent migration of Han Chinese individuals *en masse* to Xinjiang mirrors Israeli migration into Palestine, and implements similar preferential policies, discrimination, and political repression which Palestinians currently endure. This has provoked many Uighurs to flee Xinjiang, meeting even the UNHCR’s limited definition of a refugee. Today China pressures ASEAN and Central Asian neighbours to deport refugees back to China (Yeoh, 2018). The state has also proven capable of reaching Uighurs directly by phone or internet, as occurred to Shawn Zhang after arriving in Vancouver (Yeoh, 2018). This constrains their freedom of mobility while inducing a state of terror. Today’s refugees are witnessing that global reach of which Hannah Arendt

warned when she wrote that “Unlike their happier predecessors, [modern refugees] were welcomed nowhere and could be assimilated nowhere” (Arendt, 1951, p. 267). These refugees are not fleeing war but persecution, and through technology, this persecution is capable of pursuing them.

Behind this action is a crisis rhetoric which aligns itself with Western ideology. Since 9/11, China has positioned itself with the United States, claiming to suffer from Uighur “terrorism” and tying Uighur organizations to Al Qaeda. In what Xi Jinping has labelled “the people’s war on terror” China has deftly allied itself with a coalition, methodizing global islamophobia into state repression. According to Maya Wang, senior China researcher at Human Rights Watch (HRW), by linking riots and separatist struggles with Middle Eastern terrorism, the country has managed to ramp up state surveillance in the area (Liu, Liu, Yang, and Wang, 2020). China has thus profited by aligning its own politics with the narrative power of Western discourse.

But surveillance appears to have changed since the cloak-and-dagger years of the Gestapo or KGB. Today, crisis rhetoric is used not to staff secret police but to collect data. The internet has produced a data trail which can be exploited by states to monitor residents’ behaviour. This is combined with traditional bureaucratic archives including identity cards, home addresses, health records, and financial documents to better staff surveillance tools (Qiang, 2019). As Tazzioli writes: [t]he traceability of migrants’ movements and the readable body of the migrant generated through the extraction of biometric traces are combined by state authorities with what data itself cannot say” (Tazzioli, 2020, p. 69). Data surveillance—or *Dataveillance* (Qiang, 2019)—can be

partially understood as a rational response to the massive amounts of public data generated daily—so called “Big Data.”

Artificial Intelligence (AI) tools are able to comb through Big Data to produce “actionable knowledge” which is can then be utilized by military security apparatuses (Ali et al., 2016). Through machine learning, computers collect data and produce their own algorithms to perform tasks automatically. Predictive Analytics schools hope to use these computers not only to respond to data, but predict future trends based on past experiences (Ali et al., 2016). This has proven particularly dangerous when applied to criminal justice and security, but that has not stopped global leaders from supporting such initiatives. In 2009 then-UN Secretary General Ban Ki Moon started the UN Global Pulse (UNGP) initiative, aiming to harness Big Data for human development (Ali et al., 2016). In 2015 the UNHCR harnessed this idea to predict crises in Syria (Ali et al., 2016). Such methods are dangerous, and leverage human safety against the human rights to property and privacy. They are the same defences that have been used by the Chinese state which uses predictive analytics to arrest Uighurs before they commit “acts of extremism.” In the global refugee regime, states are expanding surveillance of refugees under the guise of AI technology, enhancing governmentality while minimizing their own responsibility as decided by the 1951 Refugee Convention. Uighur IDPs and refugees act as an example of this trend, due to the intensive surveillance they are submitted to by the Chinese state.

An Ad Hoc Panopticon

China's Integrated Joint Operations Platform (IJOP) operates in Xinjiang by collecting Big Data and alerting authorities to those it deems potentially harmful to the CCP regime. It does so through two major devices: the mobile phone, and the camera. These act as tools of disablement constraining Uighur mobility and settlement.

Uighurs are now obligated to carry smartphones, on which police mandate “nanny apps” to monitor Uighurs through their devices. The Jingwang (“cleansing the web”) app not only tracks Uighurs’ movement, but also records and extracts all messages, internet use, contacts, photographs, and files. These are then amalgamated by IJOP which uses keyword searches to compare the data to its list of potential crimes, which include prayer, visiting banned websites, and other petty accusations (see Appendix 1.1 for more detail) (Pitel, Shepherd, and Klasa, 2020). IJOP then decides who is considered a threat and will thus be arrested, and who will simply continue to be monitored. Cameras, meanwhile, have been equipped since 2011 to recognize facial features and match them with government archives, which can be used to track individuals’ movements or find suspect refugees. By 2022, China hopes to have 2.76 billion surveillance cameras feeding into its national panopticonic network. In many ways, facial recognition technology acts as a perfect analogy for the IJOP system. It puts minorities on display, while masking those who are observing, be they individuals, computers, or basic algorithms. Like all panopticons, it is one way, causing sincere psychosocial stress for Uighurs. As Fanon wrote in 1965 “There is not occupation of territory, on the one hand, and independence of persons on the other. It is the country as a whole, its history, its daily pulsation that

are contested [...] Under these conditions, the individual's breathing is an observed, an occupied breathing. It is a combat breathing" (Fanon, cited in Tazzioli, 2020, p. 49).

This was my understanding of Xinjiang until very recently. It is the story Beijing likes to deny; that Uighurs are under a constant state of surveillance, under penalty of prison camps, torture, and death; that Uighurs must be careful with every step to avoid imprisonment at the hands of an omniscient, omnipresent algorithm. Such a world enforces a sense of terror ensuring communal complacency in the face of settler colonialism, limiting outcry by international refugees alongside internally displaced Uighur civilians.

In reality, the technology is far less effective than the state claims. Phone-based trackers in China have been shown to place individuals up to 2km away from their actual location (Liu, Liu, Yang, and Wang, 2020). Voice recognition has proven very dubious, and is often vulnerable to mistakes (Qiang, 2019). "To the outside world," Liu writes, "China can often seem like a monolith, with edicts from Beijing ruthlessly implemented by the rest of the system. The coronavirus pandemic has also demonstrated a much messier reality... The state's ability to access personal data is at times limited" (Liu, Liu, Yang, and Wang, 2020). John Phipps, who recently wrote about Xinjiang for *The Economist* confirmed these limitations (Phipps, 2020). "Uighurs insist on reminding me that even though this is sometimes called a perfect surveillance state, it's not perfect. It's enforced by humans who make mistakes."¹ In reality China's system is limited by the

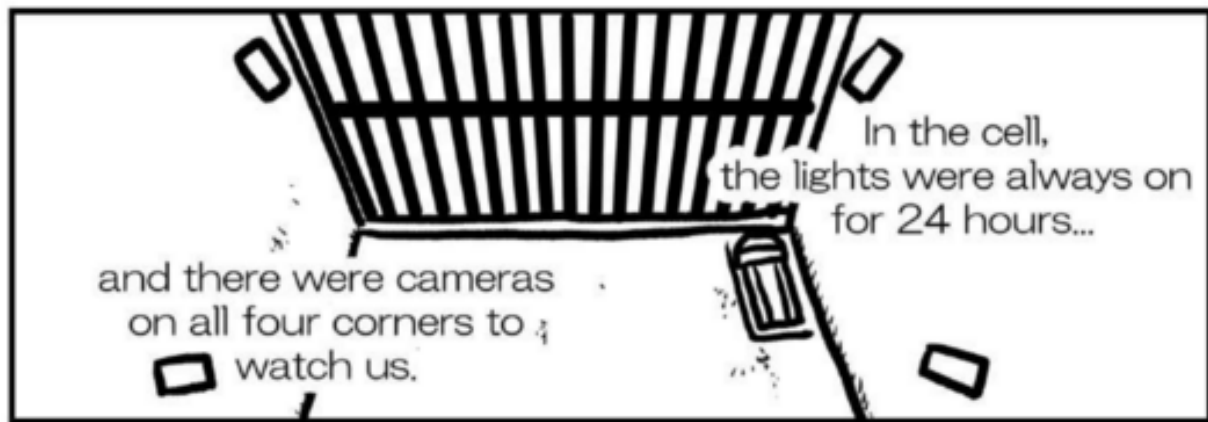
¹ John Phipps (journalist) in discussion with the author, April 2020.

capabilities of current technology. Recognizing this, the state has embraced its own incapacity to establish order.

In doing so they have implemented a regime reliant on what Elizabeth Dunn calls *adhococracy*: “a form of power that creates chaos and vulnerability as much as it creates order” (Dunn, 2012, p. 2). Understanding the coercive power of the state, alongside the ad-hoc nature of IJOP’s algorithm, refugees are more likely to obey strict regulations. Surveillance and its repercussions appear random and uncoordinated, increasing psychosocial fears of a state-sponsored panopticon. But unlike Bentham’s original panopticon, which failed to address state bias, this adds a level of racialization relating to Islamophobic crisis rhetoric. “The seeming randomness of investigations resulting from IJOP isn’t a bug but a feature” Samantha Hoffman, an analyst for an Australian policy think tank, described to the ICIJ. “That’s how state terror works. Part of the fear that this instills is that you don’t know when you’re not OK” (Allen-Ebrahimian, 2019). This is not to say that AI and surveillance technology is not dangerous, but that its implementors have chosen to amplify its danger to better meet their goals. Rather than attempt to be everywhere, China settled for being anywhere.

Case studies may be useful in understanding the coercive effect this can have. After serving an algorithm which sends refugees to prison camps, cameras continue to pursue them. As Sayragul Sautbay, a former detainee explained: “I received a uniform and was taken to a tiny bedroom with a concrete bed and a thin plastic mattress. There were five cameras on the ceiling—one in each corner and another one in the middle... The only room that didn’t have cameras was the Black Room, which was used to torture

the prisoners (Stavrou, 2020). The state continues their panopticonic mental projection inside prison camps. This many cameras in this positioning are more than could possibly be necessary. But this overload encourages a sense of being observed, therefore encouraging mental breakdowns and indoctrination. Sautbay's description defends this theory. Notice that she did not just report cameras, but cited the exact number and their position, which clearly had long-term effects on her memory. The use of surveillance technology inside the camps did not only aid in punishing Uighur detainees, but helped to prevent any insubordination. Such a tactic enforces a level of compliance with camp security that overt violence cannot reach, including self-censorship and paranoia.



A panel from a manga written from the transcribed testimony of former Uighur detainee Mihrigul Tursun, who, like Sautbay, emphasized the amount and position of security cameras. One can observe from the panel that this amount is unnecessary for security, and I argue it is to enforce psychosocial repression (Tomomi, 2019)

The same tactics are applied to attempted coverage of the issue. Serene Fang, who worked for PBS's *Frontline*, explored Xinjiang in 2003. She described how Chinese police eventually confronted her with recordings of her journey:

We thought we weren't being watched. We thought we did not raise any red flags. But as I learned on my second trip, they had watched us almost the entire way. Not only did they watch us in China, but they also crossed the border and watched us and the people we interviewed in Kazakhstan... They also *wanted to let me know* that they knew a lot about me. I had no idea that they had followed me the whole first trip. So I think part of it was to let me know that I couldn't come here and do this, that this particular part of China was very closely observed (Fang, 2015) [italics added for emphasis].

She further described one of her sources, who came to her with information on political repression. “He sat in our hotel room trembling, for close to an hour, and refused to be videotaped... he didn't feel very safe where we held the interview, which was in his hotel room” (Fang, 2015). Maintaining senses of omniscience encourages dread among refugees, limiting any advocacy they might attempt. John Phipps described similar issues, warning me about common mistakes when interviewing these refugees.

“Remember that Uighurs grew up *self-policing*, conscious of being watched. What Updike said about “celebrity being a mask that eats into the face” applies to them. You can’t just ask them about spies and informants. You have to be aware” [italics added for emphasis].² By limiting journalistic coverage of refugees, China inhibits one of their main paths of advocacy while dismantling the potential for a Uighur narrative.

Tazzioli claims that states abuse technology to harness the image of the refugees, and the Uighur case exemplifies her understanding of technology and the state. (Tazzioli, 2020). In this case, tech is being used to make refugees *extremely* visible, both to the general public by visualizing them as terrorists, and to themselves, intimidating them into silence by constantly keeping them under surveillance. There is no time in Xinjiang

² John Phipps (journalist) in discussion with the author, April 2020.

that Uighurs feel they are not on display—that an image of their likeness is not in some room being made—helping to limit any insubordination that might result. As individuals they are expected to have personal rational reactions in fear of surveillance mechanisms, and therefor comply with state terror. Through this hypervisibility, racial distinctions and Uighur's social positionality are strengthened. Just as invisibility can limit refugee narratives, so too can their over-visibility.

Traditional sources like DNA, health records, and financial documents all combine with technological sources to create this terrified reaction. “This hasn’t been a tech triumph,” explained Ryan Manuel, director of research firm Official China, “this has been a triumph for the party and their old school methods” (Liu, Liu, Yang, and Wong, 2020). It is to “old school methods” that we now turn.

End of the (online) Rights of Man

Apart from psychosocial terrorism, artificial intelligence serves the state by absolving it of responsibility for refugees. Lack of accountability, or overlapping accountabilities, is a major cog caused by the global AI machine, and mirrors the same overlap in the human rights regime pointed out by Hannah Arendt in 1951 (Arendt, 1951). Hin-yan describes a “practical responsibility gap” in the AI regime in which the manufacturers of an autonomous learning machine are incapable of predicting its future behaviour (Hin-Yan, 2017). This not only muddies the waters of blame for AI actions, but complicates the very logics of cause and effect. As systems grow more autonomous, human control recedes, along with culpability for its work.

By demanding an algorithm act as a detective and jury in Xinjiang, China ensured blame on police or the state would be comparatively weakened. We (as citizens and academics) tend to have limited understandings of robotics. We don't know how programs work, how they are made, or how much autonomy they have. The same is largely true for politicians in power. Hin-yan describes this as a "regulatory lag" in which emergent technologies exist, for some time, under a state of libertarianism, as policy-makers do not understand its inner workings enough to regulate them (Hin-Yan, 2017). This gives surveillance technology "effectively lawless—or at any rate law-free—territory" according to Shoshanna Zuboff, who recently authored a book on the subject (Naughton, 2019). Neither Uighurs nor the international community are capable of demanding advocacy against an enemy no one understands. This leaves those persecuted under AI effectively stateless, without protection from any law in this regard. When Gay McDougal, head of the UN Committee on the Elimination of Racial Discrimination, describes Xinjiang's camps as a "no rights zone" he fails to realize the entire region suffers this reality, due to the shifting of discriminatory mechanism from law enforcement to algorithms (Yeoh, 2018).

Arendt warned of increasing police violence when individuals are not recognized as a state responsibility. In Xinjiang's case, algorithms through IJOP have taken the place of police, acting as a coercive regulator of Uighur mobility. One need only replace "police" with "algorithm" in Arendt's *Origins of Totalitarianism* to see a perfect description of Uighur predicaments right now:

Since the man without a state was “an anomaly for whom there is no appropriate niche or framework of the general law”—an outlaw by definition—he was completely at the mercy of the [*algorithm*], which itself did not worry too much about committing a few acts in order to diminish the country's burden of indésirables... This was the first time the [*algorithm*] had received authority to act on its own, to rule directly over people; in one sphere of public life it was no longer an instrument to carry out and enforce the law, but had become a ruling authority independent of government (Arendt, 1951, pp. 283-287).

But Arendt's warning should not be understood to mean the police acted independently.

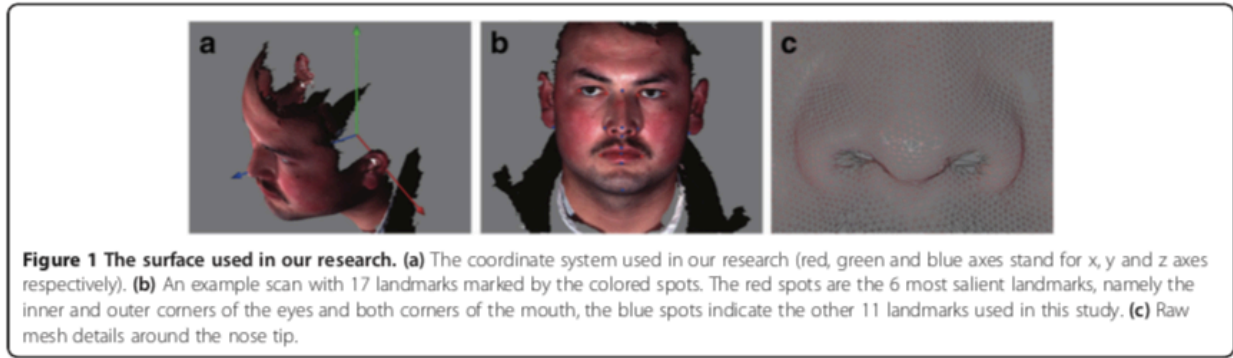
Instead, those officers in the early 20th century followed the logic of the state, which dismissed minorities and often acted against them in order to maintain their power. As it did with the police, the state now acts through algorithms to accomplish its ambitions.

Similar to the police, algorithms like IJOP are a reflection of state logic.

China, like other states today, manages to avoid responsibility for refugees through language and misunderstandings. Language used by program developers in the public and private sector to describe new technology like AI is often obfuscating, masking realities in dense jargon unintelligible to most people (Sadowski, 2018). This similarly applies to scholars studying new technology, who find themselves incapable of reporting on the subject, disrupting traditional linkages between academia, the press, and state policy (Forsythe, 2001). On top of language, misunderstandings of AI programs obstruct public knowledge. As discussed by Kostakis, actors too often escape blame by pretending their algorithm is natural, rational, amoral, or apolitical, and acts without the prejudices of humanity (Kostakis and Giotitsas, 2014). In reality, algorithmic codes can be extremely biased, resulting from the programmer's intentions. Its output is dependent on the data one puts into the machine and the analysis one hopes to make. One case of

bias was famously documented when an AI in the United States encouraged arresting more African Americans as they made up a higher portion of the convicted population (Feldstein, 2019). In reality, algorithms risk entrenching preconceived racial biases against the refugee “other” and is a major reason why they should be distanced from the refugee regime. I believe China is aware of this, and is utilizing such biases against Uighur citizens while absolving itself in the process. The state is not to blame, but an unbiased algorithm.

Felicity Schaeffer studied this effect within anthropological history. The defences of algorithmic discrimination against refugee populations mimic the naturalist defences used in phrenology and early anthropology to implement colonialism. Now, rather than biological explanations for criminal behaviour among “uncivilized” populations, states use math and logic to colonize Uighur territory. These algorithms maintain colonial binaries related to racial otherness, but relegate such social forces into natural or automatic reactions which the computer effortlessly calculates. The state relies on the algorithms to speak for refugee lives, and to pass judgement on them (Schaeffer, 2018). This speaks to the idea of the “lying refugee,” who must be investigated through algorithmic decision making and Big Data, rather than their own testimony. Once again, we see Xinjiang’s Palestinianization in action, creating a generation of refugees while colonizing their territory and subjugating those IDPs remaining—led by the state, but implemented through algorithmic decision-making.



A figure from a section of Guo et al.'s investigation of facial recognition. I argue that this technology mirrors nineteenth century phrenology, and applies similar logics to amplify modern colonialism and displacement. (Guo, Mei, and Tang, 2013).

Coverage of this ad hoc panopticon largely ignores its human side to focus on the technological marvel that is IJOP. I empathize with the inclination. New technology like artificial intelligence is an extremely appealing subject—flashy, sexy, and unknown. But journalists and academics often find themselves mired in these worlds, unaware that they are simply masking typical state behaviour. In this case, technology has intensified state power over mobility and repression, but by focussing on methods, researchers ignore the actors involved.

“If you want to challenge an algorithmic decision in a court of law,” anthropologist Petra Molnar asks, “is it the designer, the coder, the immigration officer, or the algorithm itself which is liable?” (Molnar, 2019, p. 8). Her question is important considering our security institutions’ expanding reliance on automated systems. Evidence of bias in algorithms is difficult to determine, and lies outside traditional jurisprudence. This is accompanied by algorithms increasingly deciding state policies, just as police did in Arendt’s era. The current refugee regime was programmed to prevent human-ordered

atrocities. “The primary responsibility for safety and security lies with states” The Global Compact on Refugees reads (UNHCR, 2018). As a result, it is possible this regime is incapable of punishing actors for abuses decided by algorithms. To solve this problem, they must understand the decision-making power of the state in its algorithm’s conclusions. The illegibility of a computers’ program should not be understood as apoliticality among the computer programmers.

Conclusion: Today’s Refugee Regime

The advent of artificial intelligence meant refugee populations would increasingly be under threat from international regimes, and have less outlets through which to combat them. Global surveillance mechanisms like the Five Eyes program use AI to review and process findings (Lin-Greenberg, 2020). This embroils questions of accountability in the refugee regime within similar questions asked of artificial intelligence. Either dismissive of these complications or aware of their obfuscatory power, today’s global refugee regime increasingly utilizes AI at the expense of refugee populations.

The state increasingly relies on AI to draw its borders. Many refugee applications are now determined by automated decision-making algorithms which review the information and output their response. Lie detecting hardware is now deployed at European borders, which process individual’s facial movements and voice patterns to analyze whether they are lying, failing to recognize stress, anxiety, or fear—feelings that are often emotive through similar movements (Molnar, 2019). In 2018, the US

Immigration and Customs Enforcement (ICE) reformatted its immigration software to automatically detain *any* migrants, including those with no criminal background, amplifying its ability to arrest and terrorize refugee populations (Oberhaus, 2018). Like IJOP, officers continue to repress refugees, but are now merely following the orders of an algorithm, avoiding direct culpability. This dismantles refugee paths to repatriation, nationalization, and resettlement. In 2012 Australia deployed the EMBRACE mechanism to help decide applications in Australia's Refugee Review Tribunal (Nissan, 2017). This "decision-support system" replaces court procedure with an algorithm that reiterates the two hundred most common arguments used in immigration law and automatically assesses each's applicability to a current case. The Refugee Review Tribunal is then advised based on its findings (Stranieri, Zeleznikow, and Yearwood, 2001). These increasingly dehumanize the refugee, ignored state responsibility under the 1951 Refugee Convention, and distanced state workers from the refugee process. Further, states avoid "old school" asylum hearings in which a judge or jury would meet a refugee, which often generated feelings of compassion and solidarity. The ethical expectations associated with refugee claims, traditionally examined at these hearings, are swept under a rug of algorithmic decision-making. Here, AI acts as a tool to help absolve the state of responsibility shifting blame to agentless computer algorithms just as China escapes blame for the work of the IJOP. This is representative of Tazzioli's point that in achieving their ambitions states often utilize their *will not to govern* as a political technology, passing the buck to others or ignoring major dilemmas (Tazzioli, 2020). As discussed, this technology is not advanced enough to act of its own accord, but acts as an

obfuscating mechanism for the state to avoid direct responsibility—a duplicitous agovernmentality.

In humanitarian circles, artificial intelligence is similarly lauded for its applicability to emergencies. Here we can once again observe crisis rhetoric, as AI is implemented to streamline aid during crises to the detriment of refugee populations. Cameras implemented in Azraq Refugee Camp, Jordan, demanded refugees scan their irises before they could be allotted daily food rations (Molnar, 2019). When the New Humanitarian investigated this site, they found refugees extremely disturbed by these iris scans, but felt obliged to comply at the risk of going hungry (Staton, 2016). Here refugees felt monitored, forced to decide between their right to privacy and their need for food. This mirrors the complacency evident in Xinjiang, where Uighurs were forced to give up any semblance of privacy to avoid coercive repression. Elsewhere, the same decisions must be made by those in crisis. Data aggregation engines like CrisisNet and the Global Database of Events collect Big Data for local governments and international institutions to serve them during humanitarian crises. For example, during Haiti's 2010 earthquake, these agencies collected local statistical registries from refugees, alongside their humanitarian data, social media posts, imagery from handheld phones, and Facebook and WhatsApp messages, declaring ownership over all this private data without the consent of the subjects involved. Such theft constitutes humanitarian imperialism, in which staff utilize a crisis to justify their invasion. As Zuboff writes, these organizations "unilaterally claim human experience as free raw material for translation into behavioural data" through the "trojan horse of technology" (Naughton, 2019). This

risks terrorizing, dehumanizing, and disempowering global refugees, who are increasingly left without any authority over their data and movements.

This is not to claim AI should be barred from migrant issues—indeed it can increasingly help aid workers plan for various events. But its implementation without refugee consent tends to terrorize refugee populations, while its implementation without public understanding allows the state to avoid culpability for its effects. This constitutes a new form of violence, one traditionally based in state interests, but implemented by code. Algorithms aren't apolitical. We must dissolve the false barrier between algorithm and actor. Whether in Xinjiang, Australia, America, or Jordan, they embody the politics of their programmers and implementers. The state, in this case, is coded.

Appendix

1.1: List of Potential Crimes in Xinjiang understood by IJOP

1. Breaking family planning laws
2. Travelling to one of 26 'sensitive' countries
3. Being involved in the 2009 protests in the city of Urumqi
4. Going on a hajj pilgrimage
5. Being related to someone who is detained
6. Being an 'untrustworthy' individual
7. Providing a place for 'illegal' worship
8. Secretly taking religious texts from the mosque to pray at home
9. Owning a passport
10. Growing a beard
11. Being a 'wild' (unofficial) Imam
12. Using a virtual private network—software that allows access to websites banned by China
13. Owning 'illegal' books
14. Getting married using a fake marriage certificate
15. Reading scripture to a child aged under 16
16. Visiting a banned website
17. Donating money to a mosque
18. Disobeying local officials
19. Praying in a public place
20. Calling someone overseas
21. Having previously served time in prison
22. Downloading violent videos

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**The Humanitarian Crisis at the U.S.-
Mexico Border:
The Policy Reforms Needed to be
Undertaken by the Biden
Administration**

Arielle Rosenthal

The last day of the Trump administration commences the first day of Biden's. The inauguration, on January 20th, 2021, of Joseph R. Biden as the 46th President of the United States marked the start of his first 100 days – the crucial benchmark that signifies to the nation the priorities of the presidential administration. This 'honey-moon' period is a President's most productive and influential time during their term. Their recent inauguration provides them with the momentum and opportunity to push their agenda through Congress, reverse executive orders and policies from the previous administrations, and decree their own (Azari, 2017). It is during this period that President Biden should focus on reforming the U.S.'s policies regarding Central American asylum seekers.

Throughout the past five years, the United States has incessantly enacted policies that restrict Central American immigration—a necessity for those in the region who have suffered from the increasing violence and persecution in the Northern Triangle (Guatemala, Honduras and El Salvador). As the number of apprehensions at the US-Mexico border has increased from 35 402 in October of 2019 to 54 771 in September of 2020 (U.S. Customs and Border Protection, 2020a), the United States' policies have engendered a humanitarian crisis that threatens the welfare of asylum seekers. An indicator of this are the makeshift refugee settlements that have appeared at the United States' border. The Biden administration's reform may begin by evaluating the current detention and deportation policies and their failures. The reform should then explore alternative practices that expand on the deliverance of humanitarian aid in a cost-

effective and efficient manner. These alternatives will prove to be a better reallocation of funds for the development of the U.S. asylum system and those it protects. The use of President Biden's precious time to reverse policies and enact his own that favour protecting Central Americans is an opportunity for his administration to transform the detrimental Trump policies that have become an ingrained practice in the immigration system.

Trump's Border Wall of Policies

Deportation Policies

An asylum seeker is a person who is seeking protection because they have suffered persecution or fear due to at least one of the following: their race, religion, nationality, membership to a particular social group, or political opinion (U.S. Citizenship and Immigration Services, 2021). A person is approved for asylum once they prove that their fear is credible before an immigration judge. Credible fear establishes that the asylum seeker has been persecuted or has a well-founded fear of persecution due to one of the five criteria. This validates their need for protection in the U.S. (Department of Homeland Security, 2020a). However, this asylum definition and the protections it provides has been threatened by the Trump administration. In a proposal by the administration on June 15th, 2020, the criteria for credible fear were adjusted to eliminate gender-based violence and any membership or relation with criminal syndicates as a justification for requesting asylum (Federal Register, 2020). Violence is one of the greatest push factors from the Latin American region, specifically in the

Northern Triangle (El Salvador, Honduras and Guatemala). Thus, by stripping away these protections, the Trump Administration effectively prevents asylum seekers from applying for asylum in the U.S.. Moreover, it places their safety in jeopardy and makes asylum seekers eligible for expedited deportation.

Expedited Deportation

The Trump administration had decreed that asylum seekers can be subjected to expedited removal. On October 21, 2020, the government released a statement indicating that asylum seekers are allowed to be deported under expedited removal proceedings without a hearing before an immigration judge (La Prensa Latina Media, 2020). Henceforth, asylum seekers' fate would be determined by asylum officers whom they have to prove their credible fear to. The agents and lawyers in charge of evaluating asylum seekers' credible fears are only required to undergo a web-based training before having the authority to implement these expedited removals. Should an asylum seeker be unable to prove credible fear, they would be immediately deported, violating the policy of non-refoulement. Under international law, non-refoulement is the prohibition for any state to force the return of refugees and asylum seekers to a place where their safety is endangered (Rodenhäuser, 2018).

Asylum seekers who are apprehended are processed for expedited removal by the U.S. Customs and Border Patrol (CBP). During their removal proceedings, CBP officials ask personal questions for their initial statement:

1. Why did you leave your home or country of last residence?
2. Do you have any fear or concern about being returned to your home country or being removed from the United States?
3. Would you be harmed if you are returned to your home country or country of last residence?
4. Do you have any questions or is there anything else you would like to add (U.S. Customs and Border Protection, 2020b)?

These questions are too general to possibly comprehend the unspeakable traumas of asylum seekers, highlighting the insufficiency and the failures of this process.

Migrant Protection Protocols (MPP)

Another strategy implemented to prevent the entry of asylum seekers into the United States is the Migrant Protection Protocols (MPP). In January of 2019, the Trump administration enacted the MPP, also referred to as the Remain in Mexico programme. Through this programme, asylum seekers are forced to remain in Mexico throughout their immigration proceedings (Department of Homeland Security, 2020b). After thousands of migrants in caravans applied for asylum at the U.S. border from October to December of 2018, the U.S. threatened Mexico with trade tariffs to force it to accept this policy (Shear and Haberman, 2019). Of the 46 947 asylum seekers who were enrolled in the MPP programme in 2019, 43 346 of them lacked representation at their court date (Syracuse University, 2020). This highlights the injustice of the immigration court system and how the Trump administration's enactment of this policy only increased the

inefficiency of it. Over 40 000 asylum seekers have been at the mercy of the court system and in a limbo state in Mexico, where they are put in further danger as they are forced to settle in border towns, known to be Mexico's most dangerous regions. Further, the administration scapegoated Mexico, limiting their responsibility to provide humanitarian aid provisions.

The MPP and the recent impact of the Covid-19 pandemic have further perpetuated the makeshift camps and increased the risks posed to the welfare of asylum seekers. The United States has never before had refugee camps at its borders for those who are needing its protection, but with the hardening of policies and the enactment of the MPP programme, these camps have been erected. At the onset of the pandemic, the United States halted its asylum proceedings at the U.S.-Mexico border. Not only did this leave those enrolled in the MPP programme stranded, but all those who wanted to seek asylum in the U.S. were unable to. Thousands have been left in precarious conditions in these camps. One camp in particular is in Matamoras, Mexico, at the border of the Rio Grande river where around 2,500 asylum seekers await their fate (Flores, 2020). With an absence of official recognition of these refugee camps, the refugees are in dire need of assistance in obtaining basic necessities including nutritious food, clean water, and proper shelter. The presence of gangs has only worsened the asylum seekers' challenges as they are susceptible to extortion, kidnappings and violence (beatings and rapes) (Dickerson, 2020). Covid-19 has been a concern as cases have already appeared within the settlements as limited resources and health measures (i.e., lack of Personal

Prevention Equipment (PPE)) are being put in place. The treatment of this already vulnerable population demonstrates how the United States can be categorized as a state that is beyond isolationist; it is inhumane and causing harm to those that it is supposed to protect. Even by revoking the MPP, the repercussions of its existence will continue to be felt as the inefficiencies and injustices of the immigration system continue to be perpetuated.

Asylum Cooperative Agreement (ACA)

A further contentious agreement made to prevent the entry of asylum seekers on U.S. territory is the Asylum Cooperative Agreement (ACA). Another Trump administration implementation, the agreement enables the United States to rapidly expel non-Guatemalan asylum seekers to Guatemala without allowing them to lodge asylum claims in the U.S. and leaving them without access to effective protection in Guatemala (Human Rights Watch, 2020). The Trump Administration designated Guatemala as a safe third country. However Guatemala, being a sending country for asylum seekers itself, does not fit the criteria of being able to protect the asylee. A country can receive this nomenclature if the asylee's life or freedom is not threatened on account of race, religion, nationality, membership in a particular social group, or political opinion within that country, and they have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection (U.S.C., n.d.). Yet, violence and poverty only increases the fear experienced by asylum seekers, as they are not only concerned with

their safety in Guatemala, but they also have had to survive with limited resources (food, money, shelter, etc.).

Further, amidst the pandemic, migrants suffering from Covid-19 are still deported to Guatemala (Janetsky, 2020). Not only has this risked the health of Guatemalans and their overwhelmed healthcare system, but it has also jeopardised the health of migrants and caused heightened stigmatisation and violence against them. Overall, there has been a fault in humanity in the deportation protocols of the United States. The pandemic reveals the inequality suffered by asylum seekers as there is an absence of adequate protection from Covid-19 in U.S. detention and deportation proceedings. Deporting someone to a country they may be unfamiliar with (after having risked their life to arrive in the U.S.) is the main asylum policy that needs to change.

Detention Policies

Detention Conditions

For the fiscal year (FY) 2020, the United States estimated it would have 54 000 migrants detained in detention facilities. This is an increase from 34 376 in the FY 2016 (Department of Homeland Security, 2020c). At least 30 people died under the Trump administration in CBP custody and the previous average stay of 44 days was usually extended by months, with some experiencing detention for a year or more when waiting for their hearing in detention (Southern Border Communities Coalition, 2020a; Blanco, 2017). The conditions of the detention facilities are dire with overcrowding and a lack of

access to toothpaste, soap, or even showers (Joung, 2019). Migrants are held in detention centres, but also in cages, tents or even sent to American prisons. There has been a lack of adequate food and medical care, contributing to migrants' physical and mental deterioration (Joung, 2019). During the Covid-19 pandemic, the lack of proper preventive measures in detention centres have made many fear for their lives (Alliance San Diego, 2020b). These inhumane conditions have had taxing effects and have only prolonged asylum seekers' suffering.

Separating Families and Unaccompanied Minors

The Trump administration oversaw a policy of separating children from their parents and placing them and unaccompanied minors in separate detention facilities. Unaccompanied minors are defined as children who cross the U.S.'s borders, are under the age of 18, have no lawful immigration status in the United States, and have no parent or legal guardian in the United States or no parent or legal guardian in the United States who is available to provide for their care and physical custody (U.S.C., 2002). In more recent years, the risks in their place of origin have outweighed that of crossing the border, with more unaccompanied children taking the perilous journey to apply for asylum. The number of unaccompanied minors being detained increased from the 2841 apprehensions in October of 2019 to 3756 in September 2020, with a total for the FY being 30 557 minors (U.S. Customs and Border Patrol, 2020a). These children were being placed in the same prison-esque conditions as adults. For young psyches, being

held in these conditions has had severe consequences; they include Post Traumatic Stress Disorder (PTSD), major depression, and suicidal thoughts (Chatterjee, 2019). The most severe consequences have been the deaths, in a 5-month period (from December 2018 to May 2019), of 5 children (from 2 ½ to 16 years old) in CBP custody due to the lack of proper medical care (Silva, 2019). Even as reunification has been attempted, there are still over 500 children whose parents are unable to be located by the Department of Homeland Security. Although these children are believed to have sponsors and/or family members in the United States, they are and were still detained (Teo Armus, 2020).

Costs of detention and deportations

While providing an overview of the risks to the welfare of asylum seekers in detention and experiencing deportations, it is feasible to review the costs undergone by American taxpayers. The overall budget for the U.S. Customs and Border Protection (USCBP) agency for the FY of 2020 was US\$ 20.8 billion, an increase of 24.9% from 2019. The budget for the U.S. Immigration and Customs Enforcement (ICE) agency for the same year was US\$ 9.3 billion, an increase of 5.58% from 2019 (Department of Homeland Security, 2020d, pp. 1-90). The budget for immigration control and to support the Trump administration's 'zero-tolerance policy for immigration' has exponentially cost taxpayers close to US\$ 31.2 billion in FY 2020 which included policing the U.S. border and prosecuting and punishing those who wish to cross it.

Yet, for the judicial facet of the asylum system, the Executive Office for Immigration Review (EOIR) was only afforded US\$ 673 million (Department of Justice, 2020, pp. 1-4). The EOIR “administers the nation's immigration court system and primarily decides whether asylum seekers, who are charged by the Department of Homeland Security (DHS) with violating immigration law, should be ordered removed from the United States or should be granted relief or protection from removal and be permitted to remain in this country” (Department of Justice, 2002, pp. 1-4). In noting that the EOIR’s budget is 2.16% of the total budget for ICE and USCBB, the efficiency and efficacy of the policies that focus on policing come into question. Furthermore, the limiting budget of the EOIR connects to the high costs for the maintenance of the detention centres as asylum seekers are forced to wait for their court proceedings there.

For the FY 2020, ICE had requested US\$ 2.7 billion for the maintenance of detention facilities and the 54,000 beds (51,500 adult and 2,500 family beds) they hold (Department of Homeland Security, 2020c, pp. 1-90). In the same year, it was estimated to cost an average of US\$ 129.64 for an adult bed per day and US\$ 295.94 for family units (mother and child staying together). Furthermore, the average cost of each deportation in the FY of 2016 was US \$10 854 (Department of Homeland Security, 2020b), and having seen the exponential rise in budgets, the costs of deportation have seemingly increased as well. Thus, the American taxpayers are paying US\$ 47 318.60 for each person who is held in a detention facility for a year and US\$ 108 018.10 for a

family unit. These costs illustrate the mishandling and misappropriation of funds for asylum seekers by the United States government. President Biden's administration can overhaul these transgressions and tribulations into a system that focuses on the welfare of asylum seekers in a cost-saving manner. Instead of an underfunded department where a backlog of cases forces asylum seekers to remain in detention facilities during their court proceedings, there are other options that can be pursued, including Alternative-to-Detention facilities that cost an average of US\$ 4.43 per person per day (Department of Homeland Security, 2020b). Henceforth, rather than costing US\$ 47 318.60 to detain a person for a year, it would cost US\$ 1 580.45 per person for this programme. It is reforms such as this—in tandem with the expansion of the EOIR budget—that need to be enacted under the Biden administration. Humanitarian-focused programmes will be a better allocation of funds and resources and will increase the well-being of asylum-seekers.

Policy Recommendation: Looking to the Biden Administration

To ensure that the Biden Administration is able to manage and improve these policies to be more humane, the detention and deportation policies must be reformed, and the deliverance of humanitarian aid practices must be expanded.

Reformation of Deportation Procedures

As previously established, the policies that the United States has enacted are expensive for American taxpayers. Funds should be used to improve the efficiency, efficacy, and fairness of the system. The first step is to acknowledge the faults in the deportation procedures. The MPP, ACA, and expedited deportation policies undercut the integrity of the asylum system. These processes have only caused further harm to asylum seekers. Hence, halting these policies is essential. Currently the only training given to those who interact with asylum seekers are web-based, are only required for CBP officers and lawyers, and lack the proper cultural and sensitivity education that ought to be included in the training (Cassidy and Lynch, 2016). This training should be widespread among CBP officers, ICE officials, Asylum Officers, and immigration judges in tandem with enhanced cultural and sensitivity education. The creation of these trainings should be inclusive with input from past asylum seekers, mental health professionals, lawyers, and the relevant government personnel. Additionally, transparency is key in assuring that personnel receive this training and that interactions with asylum seekers are properly documented (Bernal, 2020).

When an asylum seeker makes their claim at the border, they have experienced unspeakable horrors and trauma that are hard to discuss. They are also disoriented by the process. Hence, in addition to enriched training for personnel, having a translator and a mental health professional on hand for the initial proceedings will ensure that asylum seekers have the support system that they need. Furthermore, the internal

asylum system is known to be overwhelmed with the amount of asylum claims that need to be processed. At the time of the enactment of the MPP, there was a backlog of 800 000 cases in the immigration court (Department of Homeland Security, 2020a). For the FY 2020, the EOIR had expected only to employ 3,761 positions and 1,641 attorneys in total (Department of Justice, 2020). This is still a considerable understaffing in comparison to the caseload under its management. To improve the efficiency of the system, a significantly greater number of judiciaries under the EOIR should be hired. Further, the cost of legal services for the asylum seeker for their initial hearing should be covered (Chen and Perez-Davis, 2019). This will allow asylum seekers to be represented at their initial hearings and help them with their hearings as well as understanding their status and the inner workings of the asylum system and process (Cassidy and Lynch, 2016).

Alternatives to Detention (ATD)

Detainment should be used as a last resort—when alternative options have been exhausted. If using detention, the centres must have their conditions improved with access to the proper care and resources for asylum seekers (Simpson et al., 2015).

As already addressed, detention and deportation programmes are expensive. The United States Government has already developed an Alternative to Detention (ATD) programme. The ATD Intensive Supervision Appearance Program (ISAP), allows for those who are deemed not a flight risk or a threat to the public to be released into the community. The current programme costs only US\$ 4.43 for every participant, which is

less expensive than the cost for a daily detention bed (Department of Homeland Security, 2020b). This programme also has a high compliance rate with 99.4% of participants appearing at their hearings (Cassidy and Lynch, 2016). However, asylum seekers are required to wear electronic monitoring ankle bracelets which stigmatises them as criminals (Cassidy and Lynch, 2016). Henceforth, the implementation and reformation of the programme must include collaborating with community based organisations to destigmatise asylum seekers as criminals in the communities and restore self-reliance and freedom. This not only decreases the cost of detention, but it also prevents the mental and physical toll that is endured in detention centres, during deportation, or at the U.S. border. Moreover, the asylum seeker will receive direct support from the surrounding community and their family members (if they have any in the U.S.), including access to an array of resources (social, legal, etc.) that they may require.

Another essential policy to deconstruct is the separation of children from guardians, their detention, and the detention of unaccompanied minors. The media has publicised the horrendous conditions that children are placed in and the physical and mental toll that they suffer from. When children are apprehended with their families, it is essential that they remain together (UNICEF, 2019). Families should be placed in ATD programmes together. To combat unaccompanied minor detention, it is important to identify and develop a care system either through a national protection system or through a guardian who is properly trained to respond to the needs of migrant children (UNICEF, 2019). Children can also be placed with their own families who are already in

the United States, host families, or they can be welcomed through supported community placement (UNICEF, 2019). It is necessary that the minor's welfare is a priority and guaranteed when a placement decision is made.

Deliverance of Humanitarian Aid: a Community-Based Approach

When providing alternatives to detention, it is important for the government to involve the community and its organisations in these programmes. In each aspect of the Alternative to Detention programmes and the provision of the services, partnering with a local NGO will be better for the asylum seeker. An asylum seeker can be more comfortable in discussing their case and their movements as they are not under the government's direct sphere of monitoring (Hutchson, 2019). Furthermore, community centres and NGOs already have resources that the United States can utilise. The U.S. government can develop a collaborative partnership with these organisations to provide a variety of resources for asylum seekers. Such resources can include legal services, housing services, medical services (both for physical and mental health), food provisions, and resources that assist in helping the asylum seeker adjust and adapt to the community (Sampson et al., 2015). Working from a community-based approach allows for "positive compliance, case resolution, cost, and health and wellbeing outcomes" for asylum seekers as they are engaged and living in the community (Sampson et al., 2015).

Providing humanitarian relief to those in the refugee camps at the U.S.-Mexico border must be an immediate policy change by the Biden administration. The official

recognition of the camp can allow for the UNHCR to provide quality infrastructure and security (Narea, 2019). The U.S. can collaborate with the UNHCR to provide these provisions along with local NGOs such as the Global Response Management, who has already been providing sanitary resources to mitigate the spread of Covid-19 (Al-Jazeraa, 2020). By providing this humanitarian relief, the immediate humanitarian crisis at the border can start to be managed and can help rather than hinder the asylum seekers' journey.

Conclusion

It is time for the United States to re-evaluate its current policies regarding the treatment of Central American asylum seekers. These implementations are crucial, especially during these dire times, which exacerbate factors relating to violence and poverty—push factors for asylum seekers. During the Presidential campaign, President Biden criticised President Trump for the inhumanity in his policies and their devastating repercussions. With the promise to enact positive change, the first 100 days of Biden's presidency are his opportunity to act on the previous administration's failures and provide the needed humanitarian protection and relief to those fleeing for their lives. President Trump infringed the rights of asylum seekers and perpetuated the practice of misappropriating funds to support policing the border rather than focusing on initiatives that promote humanity and efficiency throughout the system. The Biden administration has the ability to negate the Trump administration's anti-immigration procedures and

create a kinder and more conducive asylum system. However, negating the previous administration's policies is not enough to improve the system itself; the Biden administration needs to ensure that they also are extracting the inhumane culture and ingrained practices from the immigration system. Through this, the Biden administration can set a sustainable precedent for humane and empathetic procedures for future personnel of the asylum system to follow.

Henceforth, it is integral for his administration to mitigate the worsening humanitarian crisis by overturning the heinous detention and deportation policies of the previous administration and focus on delivering humanitarian aid with community collaboration. President Biden can usher in the era of acceptance and compassion towards asylum seekers that has been hoped for.

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